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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Donald W. Kelley

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EXAMINER

HUYNH, CARLIC K

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/805,926	Applicant(s) KELLEY, DONALD W.	
	Examiner Carlic K. Huynh	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 16-18, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>26 November 2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

1. Claims 1-18 and 21-22 are pending in the application, with claims 10-15 having been withdrawn and claims 19-20 having been cancelled, in response to the restriction requirement submitted on August 31, 2007. Accordingly, claims 1-9, 16-18, and 21-22 are being examined on the merits herein.

Election/Restrictions

2. Applicant's election of the claims of Group I, namely claims 1-9, 16-18, and 21-22, in the reply filed on October 17, 2007 is acknowledged. It is noted that in an Amendment-After Non-Final Rejection filed October 17, 2007, Applicants have cancelled claims 19-20 and added new claims 21 and 22. Because Applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 10-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made without traverse in the reply filed on October 17, 2007.

3. Applicants' election of: (1) ethylene-vinyl acetate copolymer as the low melting polymer or copolymer; (2) stearic acid as the solid fatty acid; and (3) d-cyphenothrin as the active agent, in the reply filed on October 17, 2007 is acknowledged. Because Applicants did not distinctly

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and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 1-9, 16-18, and 21-22 are examined on the merits herein.

The election/restriction requirement is deemed proper and is made FINAL.

Claims 1-9, 16-18, and 21-22 are directed to a polymeric formulation or a pest control system and thus intended use is not given any patentable weight.

Information Disclosure Statement

The Information Disclosure Statement submitted on November 26, 2005, is acknowledged.

Specification

4. The use of the trademarks Microthene® and Nylar® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-9, 16-18, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagamatsu et al. (US 5,948,832) in view of Matsunaga et al. (US 5,028,623).

Nagamatsu et al. teach insect controlling compounds such as the pyrethroid compounds, namely cyphenothrin, and their synergists, namely piperonyl butoxide (column 4, lines 16-36). The compounds of Nagamatsu et al. can be made into animal collars, ear tags, medals, etc. or nets, fibers, nonwoven fabrics, sheets, films, etc. (column 7, lines 31-33).

Nagamatsu et al. further teach ethylene-vinyl acetate copolymer and stearic acid may be in the composition (column 5, lines 64-65; and column 6, line 45). Moreover, the stearic acid is 0.1 to 100 parts by weight for 100 parts by weight of ethylene-vinyl acetate (column 6, lines 52-56). Thus it would be obvious the pest control system of Nagamatsu et al. may comprise of 50 wt% of ethylene-vinyl acetate copolymer and 50 wt% of stearic acid.

Nagamatsu et al. do not explicitly teach d-cyphenthtrin.

Matsunaga et al. teach d-cyphenothrin with a synergist, such as piperonyl butoxide, is used as an insecticide (column 3, lines 12-14).

Accordingly, absence the showing of unexpected results, it would have been obvious to a person of skill in the art at the time of the invention to employ the composition of Nagamatsu et al. to contain d-cyphenthtrin because the composition of Matsunaga et al. contains d-cyphenthtrin and according to Matsunaga et al., d-cyphenthtrin can be used as an insecticide.

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The motivation to combine the compounds of Nagamatsu et al. to the compounds of Matsunaga et al. is that the compositions of Matsunaga et al. are d-cyphenthrin compositions and that such compositions can be used as an insecticide.

It is noted that "It is obvious to combine individual compositions taught to have the same utility to form a new composition for the very same purpose" and "It is obvious to combine two compositions taught by the prior art to be useful for the same purpose to form a third composition that is to be used for the very same purpose". *In re Kerkhoven*, 626 F.2d 846, 205 U.S.P.Q. 1069 (C.C.P.A. 1980).

Regarding from about 40 to about 80 wt % of low melting polymer or copolymer in the form of granules, small irregularly shaped particles or powder and from about zero to about 15 wt% of low melting point polymer or copolymer in the form of conventional pellets as recited in claim 2, Nagamatsu et al. teach the low melting polymer or copolymer of ethylene-vinyl acetate copolymer. Since Nagamatsu et al. do not teach a specific form of ethylene-vinyl acetate copolymer, it would be obvious that from about 40 to about 80 wt % of ethylene-vinyl acetate copolymer is in the form of granules, small irregularly shaped particles or powder and from about zero to about 15 wt% of ethylene-vinyl acetate copolymer is in the form of conventional pellets.

Conclusion

6. No claims are allowable.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlic K. Huynh whose telephone number is 571-272-5574. The examiner can normally be reached on Monday to Friday, 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ckh


SHENGJUN WANG
PRIMARY EXAMINER